

It would be proper under MPEP 803.02 to impose a provisional species election with respect to these claims, and to examine the provisionally elected species before the non-elected species. If the provisionally elected species is found to be patentable, the broader Markush claim would then be searched. Consistent with this interpretation, the examiner has indicated that the remaining claims in the case could be rejoined if claim 1 is found to be allowable. It thus appears that a provisional species election would be appropriate in this case.

The MPEP provides that "[i]t is improper for the Office to refuse to examine that which applicants regard as their invention, unless the subject matter in a claim lacks unity of invention." MPEP 803.02. No evidence has been presented to make a prima facie case that unity of invention is lacking in this application. The members of the Markush group share a common utility, protecting the user of a saw from injury, and share a substantial structural feature essential to that utility, namely, a lock. These facts are believed to establish unity of invention for all pending claims. Furthermore, the members of the Markush group are few in number and can be examined without serious burden, both being directed to a lock.

Consequently, Applicant provisionally elects the patentably distinct species of Group IIb, which comprises a saw having a first lock means (or a first lock), a second lock means (or a second lock) and a sensor means (or a sensor). Claim 1 is present in all Groups defined in the Office Action, making the description of the different species/inventions somewhat vague. Therefore, all claims in the application are believed to read on the species of Group IIb. Applicant reserves the right to reconsider this position if the Examiner clarifies the species election requirement in the next Office

Action.

Applicant further agrees with the Examiner's determination that the first lock means (or first lock) and second lock means (or second lock) define patentable distinct inventions. Therefore, although the applicant is not aware of any prior art references directed to either a first lock means (or a first lock) or a second lock means (or a second lock) of the present claims, should the Examiner locate such a reference, Applicant agrees that such prior art reference, which only discloses either the first lock means (or first lock) or the second lock means (or second lock) would not make the elected species obvious.

With regard to the above amendment, minor changes have been made to the form of certain of the original claims to place them in better condition for examination. In addition, new claims 18-25 have been added which define the invention in somewhat different terms.

In view of the above remarks, examination of claims 1-25 of the subject application is respectfully requested. Applicant's attorney can be reached at the below telephone number if further information is needed.

Respectfully submitted,
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